

## Calendar No. 596

109TH CONGRESS  
2D SESSION**S. 3873**To protect private property rights.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 6), 2006

Mr. INHOFE introduced the following bill; which was read the first time

SEPTEMBER 8, 2006

Read the second time and placed on the calendar

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**A BILL**

To protect private property rights.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Private Property  
5       Rights Protection Act of 2006”.

6       **SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY**  
7       **STATES.**

8       (a) IN GENERAL.—No State or political subdivision  
9       of a State shall exercise its power of eminent domain, or

1 allow the exercise of such power by any person or entity  
2 to which such power has been delegated, over property to  
3 be used for economic development or over property that  
4 is subsequently used for economic development, if that  
5 State or political subdivision receives Federal economic de-  
6 velopment funds during any fiscal year in which it does  
7 so.

8 (b) INELIGIBILITY FOR FEDERAL FUNDS.—A viola-  
9 tion of subsection (a) by a State or political subdivision  
10 shall render such State or political subdivision ineligible  
11 for any Federal economic development funds for a period  
12 of 2 fiscal years following a final judgment on the merits  
13 by a court of competent jurisdiction that such subsection  
14 has been violated, and any Federal agency charged with  
15 distributing those funds shall withhold them for such 2-  
16 year period, and any such funds distributed to such State  
17 or political subdivision shall be returned or reimbursed by  
18 such State or political subdivision to the appropriate Fed-  
19 eral agency or authority of the Federal Government, or  
20 component thereof.

21 (c) OPPORTUNITY TO CURE VIOLATION.—A State or  
22 political subdivision shall not be ineligible for any Federal  
23 economic development funds under subsection (b) if such  
24 State or political subdivision returns all real property the  
25 taking of which was found by a court of competent juris-

1 diction to have constituted a violation of subsection (a)  
 2 and replaces any other property destroyed and repairs any  
 3 other property damaged as a result of such violation.

4 **SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE**  
 5 **FEDERAL GOVERNMENT.**

6 The Federal Government or any authority of the Fed-  
 7 eral Government shall not exercise its power of eminent  
 8 domain to be used for economic development.

9 **SEC. 4. PRIVATE RIGHT OF ACTION.**

10 (a) CAUSE OF ACTION.—Any owner of private prop-  
 11 erty who suffers injury as a result of a violation of any  
 12 provision of this Act may bring an action to enforce any  
 13 provision of this Act in the appropriate Federal or State  
 14 court, and a State shall not be immune under the eleventh  
 15 amendment to the Constitution of the United States from  
 16 any such action in a Federal or State court of competent  
 17 jurisdiction. In such action, the defendant has the burden  
 18 to show by clear and convincing evidence that the taking  
 19 is not for economic development. Any such property owner  
 20 may also seek any appropriate relief through a preliminary  
 21 injunction or a temporary restraining order.

22 (b) LIMITATION ON BRINGING ACTION.—An action  
 23 brought under this Act may be brought if the property  
 24 is used for economic development following the conclusion  
 25 of any condemnation proceedings condemning the private

1 property of such property owner, but shall not be brought  
 2 later than seven years following the conclusion of any such  
 3 proceedings and the subsequent use of such condemned  
 4 property for economic development.

5 (c) ATTORNEYS' FEE AND OTHER COSTS.—In any  
 6 action or proceeding under this Act, the court shall allow  
 7 a prevailing plaintiff a reasonable attorneys' fee as part  
 8 of the costs, and include expert fees as part of the attor-  
 9 neys' fee.

10 **SEC. 5. NOTIFICATION BY ATTORNEY GENERAL.**

11 (a) NOTIFICATION TO STATES AND POLITICAL SUB-  
 12 DIVISIONS.—

13 (1) Not later than 30 days after the enactment  
 14 of this Act, the Attorney General shall provide to the  
 15 chief executive officer of each State the text of this  
 16 Act and a description of the rights of property own-  
 17 ers under this Act.

18 (2) Not later than 120 days after the enact-  
 19 ment of this Act, the Attorney General shall compile  
 20 a list of the Federal laws under which Federal eco-  
 21 nomic development funds are distributed. The Attor-  
 22 ney General shall compile annual revisions of such  
 23 list as necessary. Such list and any successive revi-  
 24 sions of such list shall be communicated by the At-  
 25 torney General to the chief executive officer of each

1 State and also made available on the Internet  
2 website maintained by the United States Depart-  
3 ment of Justice for use by the public and by the au-  
4 thorities in each State and political subdivisions of  
5 each State empowered to take private property and  
6 convert it to public use subject to just compensation  
7 for the taking.

8 (b) NOTIFICATION TO PROPERTY OWNERS.—Not  
9 later than 30 days after the enactment of this Act, the  
10 Attorney General shall publish in the Federal Register and  
11 make available on the Internet website maintained by the  
12 United States Department of Justice a notice containing  
13 the text of this Act and a description of the rights of prop-  
14 erty owners under this Act.

15 **SEC. 6. REPORT.**

16 Not later than 1 year after the date of enactment  
17 of this Act, and every subsequent year thereafter, the At-  
18 torney General shall transmit a report identifying States  
19 or political subdivisions that have used eminent domain  
20 in violation of this Act to the Chairman and Ranking  
21 Member of the Committee on the Judiciary of the House  
22 of Representatives and to the Chairman and Ranking  
23 Member of the Committee on the Judiciary of the Senate.  
24 The report shall—

1           (1) identify all private rights of action brought  
2           as a result of a State’s or political subdivision’s vio-  
3           lation of this Act;

4           (2) identify all States or political subdivisions  
5           that have lost Federal economic development funds  
6           as a result of a violation of this Act, as well as de-  
7           scribe the type and amount of Federal economic de-  
8           velopment funds lost in each State or political sub-  
9           division and the Agency that is responsible for with-  
10          holding such funds;

11          (3) discuss all instances in which a State or po-  
12          litical subdivision has cured a violation as described  
13          in section 2(c) of this Act.

14 **SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

15          (a) FINDINGS.—Congress finds the following:

16           (1) The founders realized the fundamental im-  
17           portance of property rights when they codified the  
18           Takings Clause of the Fifth Amendment to the Con-  
19           stitution, which requires that private property shall  
20           not be taken “for public use, without just compensa-  
21           tion”.

22           (2) Rural lands are unique in that they are not  
23           traditionally considered high tax revenue-generating  
24           properties for State and local governments. In addi-  
25           tion, farmland and forest land owners need to have

1 long-term certainty regarding their property rights  
2 in order to make the investment decisions to commit  
3 land to these uses.

4 (3) Ownership rights in rural land are funda-  
5 mental building blocks for our Nation's agriculture  
6 industry, which continues to be one of the most im-  
7 portant economic sectors of our economy.

8 (4) In the wake of the Supreme Court's deci-  
9 sion in *Kelo v. City of New London*, abuse of emi-  
10 nent domain is a threat to the property rights of all  
11 private property owners, including rural land own-  
12 ers.

13 (b) SENSE OF CONGRESS.—It is the sense of Con-  
14 gress that the use of eminent domain for the purpose of  
15 economic development is a threat to agricultural and other  
16 property in rural America and that the Congress should  
17 protect the property rights of Americans, including those  
18 who reside in rural areas. Property rights are central to  
19 liberty in this country and to our economy. The use of  
20 eminent domain to take farmland and other rural property  
21 for economic development threatens liberty, rural econo-  
22 mies, and the economy of the United States. The taking  
23 of farmland and rural property will have a direct impact  
24 on existing irrigation and reclamation projects. Further-  
25 more, the use of eminent domain to take rural private

1 property for private commercial uses will force increasing  
 2 numbers of activities from private property onto this Na-  
 3 tion’s public lands, including its National forests, National  
 4 parks and wildlife refuges. This increase can overburden  
 5 the infrastructure of these lands, reducing the enjoyment  
 6 of such lands for all citizens. Americans should not have  
 7 to fear the government’s taking their homes, farms, or  
 8 businesses to give to other persons. Governments should  
 9 not abuse the power of eminent domain to force rural  
 10 property owners from their land in order to develop rural  
 11 land into industrial and commercial property. Congress  
 12 has a duty to protect the property rights of rural Ameri-  
 13 cans in the face of eminent domain abuse.

14 **SEC. 8. DEFINITIONS.**

15 In this Act the following definitions apply:

16 (1) ECONOMIC DEVELOPMENT.—The term  
 17 “economic development” means taking private prop-  
 18 erty, without the consent of the owner, and con-  
 19 veying or leasing such property from one private  
 20 person or entity to another private person or entity  
 21 for commercial enterprise carried on for profit, or to  
 22 increase tax revenue, tax base, employment, or gen-  
 23 eral economic health, except that such term shall not  
 24 include—

25 (A) conveying private property—



1 (i) to public ownership, such as for a  
2 road, hospital, airport, or military base;

3 (ii) to an entity, such as a common  
4 carrier, that makes the property available  
5 to the general public as of right, such as  
6 a railroad or public facility;

7 (iii) for use as a road or other right  
8 of way or means, open to the public for  
9 transportation, whether free or by toll;

10 (iv) for use as an aqueduct, flood con-  
11 trol facility, pipeline, or similar use;

12 (B) removing harmful uses of land pro-  
13 vided such uses constitute an immediate threat  
14 to public health and safety;

15 (C) leasing property to a private person or  
16 entity that occupies an incidental part of public  
17 property or a public facility, such as a retail es-  
18 tablishment on the ground floor of a public  
19 building;

20 (D) acquiring abandoned property;

21 (E) clearing defective chains of title;

22 (F) taking private property for use by a  
23 public utility; and

24 (G) redeveloping of a brownfield site as de-  
25 fined in the Small Business Liability Relief and

1           Brownfields Revitalization Act (42 U.S.C.  
2           9601(39)).

3           (2) FEDERAL ECONOMIC DEVELOPMENT  
4           FUNDS.—The term “Federal economic development  
5           funds” means any Federal funds distributed to or  
6           through States or political subdivisions of States  
7           under Federal laws designed to improve or increase  
8           the size of the economies of States or political sub-  
9           divisions of States.

10          (3) STATE.—The term “State” means each of  
11          the several States, the District of Columbia, the  
12          Commonwealth of Puerto Rico, or any other terri-  
13          tory or possession of the United States.

14   **SEC. 9. SEVERABILITY AND EFFECTIVE DATE.**

15          (a) SEVERABILITY.—The provisions of this Act are  
16          severable. If any provision of this Act, or any application  
17          thereof, is found unconstitutional, that finding shall not  
18          affect any provision or application of the Act not so adju-  
19          dicated.

20          (b) EFFECTIVE DATE.—This Act shall take effect  
21          upon the first day of the first fiscal year that begins after  
22          the date of the enactment of this Act, but shall not apply  
23          to any project for which condemnation proceedings have  
24          been initiated prior to the date of enactment.

1 **SEC. 10. SENSE OF CONGRESS.**

2 It is the policy of the United States to encourage,  
3 support, and promote the private ownership of property  
4 and to ensure that the constitutional and other legal rights  
5 of private property owners are protected by the Federal  
6 Government.

7 **SEC. 11. BROAD CONSTRUCTION.**

8 This Act shall be construed in favor of a broad pro-  
9 tection of private property rights, to the maximum extent  
10 permitted by the terms of this Act and the Constitution.

11 **SEC. 12. LIMITATION ON STATUTORY CONSTRUCTION.**

12 Nothing in this Act may be construed to supersede,  
13 limit, or otherwise affect any provision of the Uniform Re-  
14 location Assistance and Real Property Acquisition Policies  
15 Act of 1970 (42 U.S.C. 4601 et seq.).

16 **SEC. 13. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

17 (a) PROHIBITION ON STATES.—No State or political  
18 subdivision of a State shall exercise its power of eminent  
19 domain, or allow the exercise of such power by any person  
20 or entity to which such power has been delegated, over  
21 property of a religious or other nonprofit organization by  
22 reason of the nonprofit or tax-exempt status of such orga-  
23 nization, or any quality related thereto if that State or  
24 political subdivision receives Federal economic develop-  
25 ment funds during any fiscal year in which it does so.

1       (b) INELIGIBILITY FOR FEDERAL FUNDS.—A viola-  
 2 tion of subsection (a) by a State or political subdivision  
 3 shall render such State or political subdivision ineligible  
 4 for any Federal economic development funds for a period  
 5 of 2 fiscal years following a final judgment on the merits  
 6 by a court of competent jurisdiction that such subsection  
 7 has been violated, and any Federal agency charged with  
 8 distributing those funds shall withhold them for such 2-  
 9 year period, and any such funds distributed to such State  
 10 or political subdivision shall be returned or reimbursed by  
 11 such State or political subdivision to the appropriate Fed-  
 12 eral agency or authority of the Federal Government, or  
 13 component thereof.

14       (c) PROHIBITION ON FEDERAL GOVERNMENT.—The  
 15 Federal Government or any authority of the Federal Gov-  
 16 ernment shall not exercise its power of eminent domain  
 17 over property of a religious or other nonprofit organization  
 18 by reason of the nonprofit or tax-exempt status of such  
 19 organization, or any quality related thereto.

20       **SEC. 14. REPORT BY FEDERAL AGENCIES ON REGULATIONS**  
 21                               **AND PROCEDURES RELATING TO EMINENT**  
 22                               **DOMAIN.**

23       Not later than 180 days after the date of the enact-  
 24 ment of this Act, the head of each Executive department  
 25 and agency shall review all rules, regulations, and proce-

1 dures and report to the Attorney General on the activities  
2 of that department or agency to bring its rules, regula-  
3 tions and procedures into compliance with this Act.

4 **SEC. 15. SENSE OF CONGRESS.**

5       It is the sense of Congress that any and all pre-  
6 cautions shall be taken by the government to avoid the  
7 unfair or unreasonable taking of property away from sur-  
8 vivors of Hurricane Katrina who own, were bequeathed,  
9 or assigned such property, for economic development pur-  
10 poses or for the private use of others.

Calendar No. 596

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 3873**

**A BILL**

To protect private property rights.

SEPTEMBER 8, 2006

Read the second time and placed on the calendar